

**ORDINANCE NO. 8
SERIES 2013**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING TITLE 14, CHAPTER 14.60, FLOOD DAMAGE PREVENTION REGULATIONS, OF THE CITY CODE OF THE CITY OF GUNNISON, AND ESTABLISHING THE PENALTY FOR THE VIOLATION THEREOF.

WHEREAS, the City of Gunnison last updated its Flood Damage Prevention Regulations in 2000; and

WHEREAS, the Federal Emergency Management Agency (FEMA) conducted a new *Flood Insurance Study* and *Digital Flood Insurance Rate Maps* that will become effective on May 16, 2013; and

WHEREAS, The *City of Gunnison Municipal Code*, Section 14.60, *Flood Damage Prevention Regulations* incorporate the study and the maps into the floodplain management process and must be updated to include these new regulations; and

WHEREAS, the City of Gunnison is required by FEMA to update its Flood Damage Prevention Regulations by May 16, 2013;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, ORDAINS THAT:

Section 1. Title 14, Chapter 14.60, table of contents shall be amended by the addition of new Section 14.60.180 and reordering of the remaining sections, and shall read:

14.60.180 Standards for Critical Facilities.
14.60.190 Floodways
14.60.200 Penalties

Section 2. Title 14, Chapter 14.60, 14.60.050 Definitions, shall be amended by the addition or amendments of the following definitions:

“Base Flood Elevation (BFE)” means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

“Basement” means any area of a building having its floor sub-grade (below ground level) on all sides.

“Conditional Letter of Map Revision (CLOMR)” means FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

“Critical Facility” means a structure or related infrastructure, but not the land on which it is situated, as specified in *GMC* Section 14.60.180, Standards for Critical Facilities, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. *See GMC* Section 14.60.180.

“Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment and/or materials located within the area of special flood hazard.

“Flood insurance study” means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, and the water surface elevation of the base flood.

“Floodplain Development Permit” means a permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one-half foot.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior or;
 - b. Directly by the Secretary of the Interior in states without approved programs.

“Letter of Map Revision (LOMR)” means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

“Letter of Map Revision Based on Fill (LOMR-F)” means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

“No-Rise Certification” means a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification

must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

“Water surface elevation” means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Section 3. Title 14, Chapter 14.60, Section .060, *Lands to which this chapter applies* shall be amended to read:

This chapter shall apply to all areas of special flood hazard and areas removed from the floodplain by a FEMA approved LOMR-F within the jurisdiction of the City of Gunnison. (Ord. 9-2000 § 1; Code 1997 § 14-6-6).

Section 4. Title 14, Chapter 14.60, Section 140, *C Information to Be Obtained and Maintained*, shall be amended by the addition of the following narrative statements:

4. Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this ordinance, including proper elevation of the structure.
5. For waterways with Base Flood Elevations for which a regulatory Floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the community.
6. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface surface elevation of the base flood by more than one-half foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.

Section 5. Title 14, Chapter 14.60, Section 140, *D. Alteration of Watercourses*, shall be amended by the addition of the following narrative statements:

3. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
4. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
5. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.
6. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.

7. All activities within the regulatory floodplain shall meet all applicable Federal, State and City of Gunnison floodplain requirements and regulations.
8. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to the existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the community first applies for a CLOMR and Floodway revision.

Section 6. Title 14, Chapter 14.60, Section 150, B. *Conditions for Variances*, shall be amended by the addition of the following narrative:

2. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

Section 7. Title 14, Chapter 14.60, Section 170, first paragraph and sub-sections A and B, shall be amended to read:

14.60.170 Specific standards.

In all areas of special flood hazard including properties removed from the floodplain by fill (LOMR-F), where base flood elevation data has been provided as set forth in GMC 14.60.070, Basis for establishing the areas of special flood hazard, or GMC 14.60.140(B), Use of Other Base Flood Data, the following provisions are required:

- A. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation;
- B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy; and,

Section 8. Title 14, Chapter 14.60, Section 170, D, 2, b, i, shall be amended to read:

- i. The lowest floor of the manufactured home is at least one foot above the base flood elevation; or

Section 9. Title 14, Chapter 14.60, shall be amended by the addition of Section 180, Standards for Critical Facilities, to read:

14.60.180 Standards for Critical Facilities.

A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

A. Classification of Critical Facilities. It is the responsibility of the City of Gunnison to identify and confirm that specific structures in their community meet the following criteria:

1. Critical Facilities are classified under the following categories: Essential Services; Hazardous Materials; At-risk Populations; and Vital to Restoring Normal Services.

a. Essential Services Facilities. Include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines. These facilities consist of:

- i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
- ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctor offices, and non-urgent care medical structures that do not provide these functions);
- iii. Designated emergency shelters;
- iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
- v. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
- vi. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures) serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).
- vii. Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.
- viii. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the {community governing body} that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the {community governing body} on an as-needed basis upon request.

b. Hazardous Materials Facilities. Include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:

- i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
- ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
- iii. Refineries;
- iv. Hazardous waste storage and disposal sites; and
- v. Above ground gasoline or propane storage or sales centers.
- vi. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material

Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation of this ordinance, but exclude later amendments to or editions of the regulations

- c. Specific exemptions to this category include:
 - i. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
 - ii. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
 - iii. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.
 - iv. These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Section.
- d. At-Risk Population Facilities. Include medical care, congregate care, and schools. These facilities consist of:
 - i. Elder care (nursing homes);
 - ii. Congregate care serving 12 or more individuals (day care and assisted living);
 - iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);
- e. Facilities Vital to Restoring Normal Services. Including government operations, these facilities consist of:
 - i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);
 - ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).
- f. These facilities may be exempted if it is demonstrated to the City of Gunnison that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the City of Gunnison on an as-needed basis upon request.

2. Protection for Critical Facilities. All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this ordinance, protection shall include one of the following:
 - a. Location outside the Special Flood Hazard Area; or
 - b. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.
3. Ingress and Egress for New Critical Facilities. New Critical Facilities shall, when practicable as determined by the City of Gunnison, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 9th day of April, 2013, on first reading, and introduced, read, and adopted on second and final reading this 23rd day of April, 2013.

Ellen Harriman

Mayor

(SEAL)

ATTEST:

Gail A Davidson

City Clerk

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